

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATIONS OF BIG RIVERS)	
ELECTRIC CORPORATION FOR:)	
(I) APPROVAL OF WHOLESALE TARIFF)	
ADDITIONS FOR BIG RIVERS ELECTRIC)	
CORPORATION, (II) APPROVAL OF)	
TRANSACTIONS, (III) APPROVAL TO ISSUE)	CASE NO. 2007-00455
EVIDENCES OF INDEBTEDNESS, AND)	
(IV) APPROVAL OF AMENDMENTS TO)	
CONTRACTS; AND OF E.ON U.S., LLC,)	
WESTERN KENTUCKY ENERGY CORP.,)	
AND LG&E ENERGY MARKETING, INC.)	
FOR APPROVAL OF TRANSACTIONS)	

O R D E R

Pending before the Commission is a motion filed by the City of Henderson Utility Commission d/b/a Henderson Municipal Power & Light ("HMPL") to compel E.ON U.S., LLC; Western Kentucky Energy Corp.; and LG&E Energy Marketing, Inc. (collectively "E.ON Entities") to provide HMPL the information provided by the E.ON Entities in response to the Attorney General's ("AG") Office Initial Data Request, Item No. 83. HMPL states that E.ON Entities filed their responses to the AG's Initial Data Request, Item Nos. 83, 100, and 101, on a confidential basis with the Commission and that HMPL offered to enter into a protective agreement with the E.ON Entities. In response to this offer, HMPL states that the E.ON Entities forwarded a protective agreement allowing HMPL to obtain on a confidential basis the E.ON Entities' responses to Item Nos. 100 and 101 of the AG's Initial Data Request, but not Item No. 83. The response to Item No. 83 concerns the amount of a payment to be made by the E.ON Entities to Alcan

Primary Products Corporation and Century Aluminum of Kentucky, General Partnership (collectively "Smelters") as an inducement for their consent to the transaction proposal in this case.

HMPL's motion states that, as a full intervenor, it is entitled to copies of all documents filed by other parties during the course of this proceeding and that there is no exception that would allow confidential documents to be withheld from HMPL. Further, the motion claims that since the AG has access to Item No. 83 pursuant to a protective agreement, the E.ON Entities are engaged in selective dissemination of information which prejudices HMPL by "preventing HMPL from being fully informed of the issues in the case and inhibiting its meaningful participation in the case."¹

The E.ON Entities filed a response in opposition to the motion to compel. The response states that the Commission's regulation governing confidential information, 807 KAR 5:001, Section 7(5)(b), establishes the exact procedure for a party to seek access to confidential information when no confidentiality agreement has been signed. Specifically, that regulation provides that, absent a protective agreement:

[A]ny party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding The Commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

The E.ON Entities claim that they have fully complied with the Commission's confidentiality regulation by providing HMPL redacted copies of the responses that were provided to the AG. The response then argues that HMPL is not entitled to anything

¹ HMPL Motion at 3.

else unless it files a petition for access to the confidential information and demonstrates that such access "is essential to a meaningful participation" in this case. The response further argues that HMPL has not filed such a petition and, in any event, the motion it did file fails to even address how the confidential information sought is essential for HMPL to participate in a meaningful manner. Finally, the response states that the information sought by HMPL concerns a payment by private parties to private parties, none of whom are regulated by the Commission.

Based on the motion and being otherwise sufficiently advised, the Commission finds that HMPL, as a party to this case, is entitled to a copy of each non-confidential document filed by another party and a redacted copy of each document filed on a confidential basis. Pursuant to our confidentiality regulation, 807 KAR 5:001, Section 7(5), no party is entitled to receive confidential information unless it has entered into a protective agreement. Absent such an agreement, a party may petition the Commission for access based on a showing that such access is essential for it to meaningfully participate in the case.

Here, the E.ON Entities have fully complied with the requirements respecting confidential information. Although the pleading filed by HMPL was designated as a motion to compel, we will deem it to be a petition for access to confidential information pursuant to 807 KAR 5:001, Section 7(5)(b). The threshold for granting a party access to confidential information is a showing that such information "is essential to a meaningful participation."

HMPL requested and was granted intervention on the basis that it owns a generating plant which has been operated by the E.ON Entities for approximately

10 years; that the relief requested in this case is to terminate that arrangement; and that such termination, if granted, will directly impact the continued operation of the HMPL generating plant and HMPL's ability to provide electric service to its customers. HMPL's pending request for access to the confidential information sets forth no explanation of how the information on payments by the E.ON Entities to the Smelters could affect the operation of HMPL's generating plant, HMPL's ability to continue service to its customers, or HMPL's ability to meaningfully participate in this case.

Considering the facts and arguments contained in HMPL's motion, the Commission finds that HMPL has not demonstrated that it is entitled to have access to the E.ON Entities' response to Item No. 83 of the AG's Initial Data Request.

IT IS THEREFORE ORDERED that HMPL's motion to compel the E.ON Entities to provide a copy of their response to Item No. 83 of the AG's Initial Data Request is denied.

Done at Frankfort, Kentucky, this 2nd day of May, 2008.

By the Commission

Commissioner Clark Abstains.

ATTEST:


Executive Director

Honorable Douglas L. Beresford
Attorney At Law
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004-1109

C William Blackburn
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

David Brown
Stites & Harbison, PLLC
1800 Providian Center
400 West Market Street
Louisville, KY 40202

George F. Hobday
Jr
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004-1109

Honorable Dennis G. Howard II
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

Honorable John N. Hughes
Attorney at Law
124 West Todd Street
Frankfort, KY 40601

Honorable Frank N. King, Jr.
Attorney at Law
Dorsey, King, Gray,
Norment & Hopgood
318 Second Street
Henderson, KY 42420

Honorable Michael L. Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202

Honorable Don Meade
Attorney at Law
Priddy, Cutler, Miller & Meade
800 Republic Bldg.
429 W. Muhammad Ali Blvd.
Louisville, KY 40202

Honorable James M. Miller
Attorney at Law
Sullivan, Mountjoy, Stainback
& Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KY 42302-0727

Gary Osborne
President
International Brotherhood of
Electrical Workers - IBEW
Local Union 101
2911 W. Parrish Avenue
Owensboro, KY 42301

Honorable Kendrick R. Riggs
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KY 40202-2828

Honorable Allyson K. Sturgeon
Attorney at Law
E.ON U.S. Services, Inc.
220 West Main Street
Louisville, KY 40202

Melissa D. Yates
Attorney
Denton & Keuler, LLP
555 Jefferson Street
P. O. Box 929
Paducah, KY 42002-0929